IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2121 OF 2005

Smt. Laxmi Tanaji Kore ... Applicant

versus

The State of Maharashtra & Anr. ... Respondents

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Mr.Amit Sale, for the Applicant.

Mr.K.V. Saste, A.P.P., for the Respondent No.1.

Dr.Smt. S.S. Phanse, Respondent No.2 in person.

...

CORAM : A.M.KHANWILKAR,J.

30th March 2005

P.C.:

. Heard Counsel for the Applicant and Respondent No.2, who is appearing in person. Perused the reply filed by Respondent No.2. The Applicant has been arrested on 22nd December 2004 in relation to private complaint filed by Respondent No.2, for offence under section 138 of the Negotiable Instruments Act. The record does

indicate that the Applicant did not make herself available for the trial of the said case, which necessitated issuance of non-bailable warrants against her. The said non-bailable warrants have been eventually executed on 22nd December 2004 with the arrest of the Applicant. Since then, the Applicant is in custody. The trial has not proceeded because the jail authorities did not produce the Applicant before the Court at the time of cross-examination of the complainant and her witnesses. The Magistrate has observed that the defence Advocate could have proceeded with the case, even in the absence of the accused. That observation, to my mind, is inappropriate. That was possible only if the accused had applied for dispensing her appeaance at the time of trial and authorised her Advocate to record plea on her behalf. There is nothing on record to suggest that such exemption was sought by the accused, Applicant herein. If that is not the case, then obviously, the cross-examination of the complainant in absence of the accused would be improper and for which reason, the Advocate appearing for the Applicant, accused, was justified in declining to proceed with the

cross-examination. Respondent No.2, who is appearing in person, is not in a position to cite the decision, to which the concerned Magistrate has made reference to in his order dated 28th February 2005, as decision of the Bombay High Court, without giving any other reference. In my view, as the Applicant is female and the trial is in respect of offence under section 138 of the Negotiable Instruments Act, coupled with the fact that she has remained in custody for almost more than three months without the trial proceeding further and there is no likelihood of immediate disposal of the case, which is instituted by Respondent No.2 only in the year 2002, which has been re-numbered as C.C.No.101/SS/2005; taking overall view of the matter, the Applicant is entitled to be released on bail, but on strict conditions as follows. I am conscious of the fact that the Applicant had not made herself available for trial in the past and in fact even surety offered by her had moved application for withderawal/cancellation of surety bond. Keeping that aspect in my mind, the Applicant is granted bail on the following strict conditions.

(A) The Applicant is directed to be released on bail in connection with complaint lodged against her before the Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai, being case No.101/SS/2005, under section 138 of the Negotiable Instruments Act on executing personal bond in the sum of Rs.15,000/- (Rupees Fifteen thousand only) with two local sureties in the like amount.

(B) The Applicant shall appear before the trial Court on every date. Assurance is given on behalf of the Applicant by the brother of the Applicant who is present in Court, through the Counsel, that this direction will be complied with without fail. That assurance is accepted. In case, the Applicant fails to appear before the trial Court on any singular date, for whatever reason, the trial Court shall proceed against the Applicant in accordance with law.

(C) The Applicant shall co-operate for

early disposal of the trial, which is condition for bail. If the trial Court is of the opinion that the Applicant is causing obstructions in early disposal of the trial, that opinion be recorded in the roznama, which can be basis for cancellation of bail.

. Application disposed of on the above terms.

(A.M.KHANWILKAR,J.)